



**Before The  
State Of Wisconsin  
DIVISION OF HEARINGS AND APPEALS**

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In the Matter of Claims Against the Dealer Bond  
of Ewald's Mayfair Chrysler Plymouth Jeep Eagle,  
Inc.

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Case No. TR-99-0036

**FINAL DECISION**

On September 23, 1999, Lisa Pehringer filed a claim against the motor vehicle dealer bond of Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc. The claim was referred to the Division of Hearings and Appeals for hearing. The Administrative Law Judge gave the parties until November 26, 1999, to file any additional information they wished to have considered in issuing a preliminary determination in this matter. No additional information was received. The Administrative Law Judge issued a Preliminary Determination on February 3, 2000. No objections to the Preliminary Determination were received. Pursuant to sec. Trans 140.26(5)(d), Wis. Adm. Code, the Preliminary Determination is adopted as the final decision of the Department of Transportation.

In accordance with secs. 227.47 and 227.53(1)(c), Stats., the PARTIES to this proceeding are certified as follows:

Lisa Pehringer  
3101 East Layton Avenue  
Cudahy, WI 53110

Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc.  
2201 North Mayfair Road  
Milwaukee, WI 53226

Capitol Indemnity Corporation  
P. O. Box 5900  
Madison, WI 53705-0900

**FINDINGS OF FACT**

1. Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc., (Dealer) is licensed by the Wisconsin Department of Transportation as a motor vehicle dealer. The Dealer's facilities are located at 2201 North Mayfair Road, Milwaukee, Wisconsin.

2. The Dealer has had a bond in force from January 1, 1994 to the present date (Bond #LP579291A from Capitol Indemnity Corporation).

3. On May 31, 1999, Lisa Pehringer purchased a 1996 Acura TL, vehicle identification number JH4UA2659TC012789, from the Dealer for \$19,189.89 including sales tax and license and registration fees. The vehicle was purchased "As Is" with no warranty.

4. On June 5, 1999, Ms. Pehringer took the vehicle to an Acura dealer for an oil change. The service manager at the Acura dealer informed Ms. Pehringer that he recognized the vehicle as one the dealership had serviced in the past. He advised Ms. Pehringer that the previous owner had "a lot of electrical problems" with the vehicle, that the manufacturer's warranty on the vehicle had been cancelled, and that he did not want to service the vehicle because of these circumstances.

5. Ms. Pehringer contacted the manufacturer and was informed by letter dated June 9, 1999, that the manufacturer's warranty was cancelled on November 4, 1997. The warranty was cancelled because the vehicle had been severely damaged in an accident while the vehicle was titled in New Jersey. The damage was repaired but the vehicle was declared a "reconstructed vehicle" and the New Jersey title was branded as "Salvage."

6. On June 17, 1999, Ms. Pehringer filed a complaint with the Wisconsin Department of Transportation (Department) against the Dealer. The Department's investigator discovered that after being reconstructed, the vehicle's title had passed through two dealers and a private party in Pennsylvania. The salvage brand was not captured on the Pennsylvania titles and the Dealer acquired the vehicle with a "clean" Wisconsin title.

7. The Wisconsin Buyers Guide completed by the Dealer and posted in the window of the vehicle at the time it was purchased by Ms. Pehringer did not disclose that the title of the vehicle should have been branded "Rebuilt Salvage" or that the manufacturer warranty had been cancelled due to the vehicle's salvage history.

8. The Dealer failed to accurately disclose the vehicle's history as rebuilt salvage; however, as discussed above, the Dealer acquired the vehicle with a "clean" title. Additionally, in the course of his investigation, the investigator for the Department inspected the vehicle. His inspection discovered no corrective weld or evidence of body straightening. The investigator also checked the vehicle identification numbers (VINs) of the vehicle and found all public and confidential VINs coincided. The investigator concluded that there was no indication of the vehicle's accident history that the Dealer should have discovered during a reasonable presale inspection.

9. The Dealer agreed to repurchase the vehicle from Ms. Pehringer. The Dealer paid Ms. Pehringer \$18,197.80 to repurchase the vehicle on August 26, 1999. The \$18,197.89 repurchase price represents the original purchase price of the vehicle less \$992.00 which the Dealer paid off on Ms. Pehringer's previously leased vehicle.

10. On September 23, 1999, Lisa Pehringer filed a claim in the amount of \$25,000 against the bond of the Dealer. The claim was filed within three years of the ending date of the period the Capitol Indemnity Corporation bond was in effect and is; therefore, a timely claim. The claim is itemized as the \$19,189.89 purchase price plus \$5,810.11 for punitive damages. This claim is not allowable. The Dealer already repurchased the vehicle for the full purchase price less \$922.00 it paid off on Ms. Pehringer's previous lease so awarding her an additional \$19,189.09 would be a double payment for the same item. Section Trans 140.21(2)(e), Stats., expressly disallows claims for punitive damages.

11. Ms. Pehringer further describes her claim as follows:

DAMAGES CLAIMED	ITEM DESCRIPTION	ITEM AMOUNT
Failure to disclose info. on window sticker	"Title brand" & "previously titled in" left blank	
2 car payments (Acura TL)		\$434.14 each, total \$868.28
Terminating previous car lease to obtain 1996 Acura TL		\$992.00
Lost wages/time & effort	Appointments & attorney & inspection, local & long distance phone call.	
CLAIM TOTAL:		\$5,810.11

Of these claims the \$866.28 for two car payments is not allowable. The principal portion of the car loan payment represents a portion of the purchase price of the vehicle. This claim again constitutes double counting because the Dealer has repaid Ms. Pehringer the original purchase price of the vehicle. The remainder of the car loan payments represents interest on the loan. Section Trans 140.21(2)(e), Wis. Adm. Code, expressly disallows interest as reimbursable claims. The \$992.00 Ms. Pehringer lists for terminating her previous car lease was paid by the Dealer, not her. Arguably the Dealer may have increased the sale price of the vehicle by this \$992.00 payment. Because the Dealer did not reimburse her this amount, Ms. Pehringer indirectly paid it. However, Ms. Pehringer had the Acura for approximately 2 ½ months and drove it over 5540 miles before the Dealer repurchased it.<sup>1</sup> Typically, in a repurchase situation an allowance is made for the use of the vehicle. The Dealer made no such deduction in this case. The \$992.00 represents a reasonable allowance for the use Ms. Pehringer had of the vehicle before it was repurchased. Accordingly, this portion of her claim is also denied.

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<sup>1</sup> The miles put on the vehicle by Ms. Pehringer was calculated by subtracting the 51,661 odometer reading on the application for title submitted to the Department at the time Ms. Pehringer purchased the vehicle from the 57,201 odometer reading on the title certificate completed when the Dealer repurchased the vehicle.

12. The Dealer may have violated sec. Trans 139.04(6)(a)1, Wis. Adm. Code, by failing to disclose on the Wisconsin Buyers Guide that the title of the vehicle had been branded "salvage." The Dealer also did not complete the section on the Wisconsin Buyers Guide listing the "State Previously Titled In." Dealers are only required to disclose that information that can be found using reasonable care. It is not clear that the title brand could have been discovered using reasonable care. Regardless, even if the Dealer did violate sec. Trans 139.04(6)(a)1, Wis. Adm. Code, Ms. Pehringer has not shown that she has suffered any loss which is allowable as a claim against the Dealer's bond as a result of the violation.

#### CONCLUSIONS OF LAW

1. Lisa Pehringer's claim arose on May 31, 1999, the date she purchased the subject vehicle from Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc. The surety bond issued to Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc., by Capitol Indemnity Corporation covers a one year period commencing on January 1, 1999. The claim arose during the period covered by the surety bond.

2. Ms. Pehringer filed a claim against the motor vehicle dealer bond of Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc., on September 23, 1999. The bond claim was filed within three years of the last day of the period covered by the surety bond. Pursuant to sec. Trans 140.21(1)(d), Wis. Adm. Code, the claim is timely.

3. Ms. Pehringer has not shown that she suffered a loss which is allowable as a claim pursuant to sec. Trans 140.21(1), Wis. Adm. Code, as the result of an act of Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc., which would be grounds for suspension or revocation of its motor vehicle dealer license.

4. The Division of Hearings and Appeals has authority to issue the following order.

#### ORDER

The claim filed by Lisa Pehringer against the motor vehicle dealer bond of Ewald's Mayfair Chrysler Plymouth Jeep Eagle, Inc., is DENIED.

Dated at Madison, Wisconsin on April 13, 2000.

STATE OF WISCONSIN  
DIVISION OF HEARINGS AND APPEALS  
5005 University Avenue, Suite 201  
Madison, Wisconsin 53705-5400  
Telephone: (608) 266-7709  
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By: \_\_\_\_\_

MARK J. KAISER  
ADMINISTRATIVE LAW JUDGE

### **NOTICE**

Set out below is a list of alternative methods available to persons who may wish to obtain review of the attached decision of the Division. This notice is provided to insure compliance with sec. 227.48, Stats., and sets out the rights of any party to this proceeding to petition for rehearing and administrative or judicial review of an adverse decision.

1. Any person aggrieved by the attached order may within twenty (20) days after service of such order or decision file with the Division of Hearings and Appeals a written petition for rehearing pursuant to sec. 227.49, Stats. Rehearing may only be granted for those reasons set out in sec. 227.49(3), Stats. A petition under this section is not a prerequisite for judicial review under secs. 227.52 and 227.53, Stats.
2. Any person aggrieved by the attached decision which adversely affects the substantial interests of such person by action or inaction, affirmative or negative in form is entitled to judicial review by filing a petition therefore in accordance with the provisions of secs. 227.52 and 227.53, Stats. Said petition must be filed within thirty (30) days after service of the agency decision sought to be reviewed. If a rehearing is requested as noted in paragraph (1) above, any party seeking judicial review shall serve and file a petition for review within thirty (30) days after service of the order disposing of the rehearing application or within thirty (30) days after final disposition by operation of law. Any petition for judicial review shall name the Division of Hearings and Appeals as the respondent. Persons desiring to file for judicial review are advised to closely examine all provisions of secs. 227.52 and 227.53, Stats., to insure strict compliance with all its requirements.